



STATE OF NEW JERSEY

In the Matter of Giovanni Leone,
Police Officer (S9999U), Cinnaminson

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2019-141

List Removal Appeal

ISSUED: JANUARY 22, 2019 (SLK)

Giovanni Leone appeals his removal from the eligible list for Police Officer (S9999U), Cinnaminson on the basis that he falsified his application.

The appellant took the open competitive examination for Police Officer (S9999U), achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant falsified his application. Specifically, the appointing authority’s background report indicates that he only disclosed three motor vehicle tickets on his application when he had six.

On appeal, the appellant presents that his certified driver’s abstract (abstract) only indicates that he had received two traffic citations (improper display/fictitious plates in May 2015 and careless driving in September 2011). Further, he recalled receiving another ticket (windshield wipers with no lights in Cinnaminson), which he also disclosed. The appellant believes that, based on this abstract, the appointing authority’s claim that he received six motor vehicle violations was in error. Further, he argues that the Motor Vehicle Commission only provides driver’s records in the form of this abstract and it indicates that he only had two motor vehicle violations. Therefore, the appellant states that he if had received other motor vehicle violations, he has no recollection or information concerning them. Additionally, he argues that the appointing authority had the resources to obtain his complete driving record and, therefore, its investigation was not in any way hampered by his inability to recall all of his motor vehicle violations. The appellant emphasizes that he did not

intentionally withhold any information and reiterates that he even informed the appointing authority concerning one violation that was not disclosed on his abstract. Further, the appellant does not believe that these omissions were material to his candidacy as a Police Officer and requests to see the standards that determine what is “material.”

In response, the appointing authority submits the instructions provided to the appellant, the motor vehicle history portion of the employment application completed by the appellant, and traffic violations discovered by the police department during the background investigation of the appellant. It argues that this documentation provides evidence that the appellant failed to disclose on his application several violations included in his driving record, which is grounds for removal from the list.

In reply, the appellant states that he disclosed four motor vehicle violations. Specifically, he attaches the motor vehicle history report which indicates two September 2011 violations (Careless Driving and No Insurance) in Pennsauken, a May 2015 violation (Improper Display of Plates) in Burlington, and a Cinnaminson violation (No Headlights with Wipers) with an unknown date. Therefore, he claims that since the appointing authority’s response is not perfectly accurate, it falsified its argument to the Civil Service Commission (Commission). The appellant reiterates his argument that since he provided all the violations based on the information that he could obtain and to the best of his recollection, he did not falsify his application. He states that he cannot verify the accuracy of the appointing authority’s claims that he had other tickets that he did not disclose as he does not have access to those systems. The appellant notes, concerning the No Insurance charge, he was found not guilty as his vehicle was insured and he just did not have the documentation to prove this at that time. He indicates, if accurate, that the other two violations that the appointing authority is presenting are No Insurance in Maple Shade, where he was found not guilty and a court fee was assessed, and he was found guilty of an out of date inspection. The appellant asserts that he disclosed his most egregious offenses and the two offenses that he omitted were minor. He highlights that he previously applied for a position with the Cinnaminson Police Department, that his prior application was almost identical, and it had not previously found any issue with his application. Therefore, the appellant questions how he could now be found to have falsified his application. He also notes that the Camden County Police Department has reviewed his background on multiple occasions, including hiring him for his current position, and it never found any issues with his truthfulness.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Commission to remove an eligible’s name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. *N.J.A.C.* 4A:4-6.3(b), in

conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

The Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. In this matter, the appellant received six moving violations between 2011 through 2015, but only listed three on his application.¹ The appellant explains that he listed the two moving violations that were listed on his abstract as well as another violation that he recalled. Further, he asserts that he should not be responsible to present moving violations that were not on his abstract and the appointing authority had the resources to discover any motor vehicle violations that he did not disclose. However, the appellant was responsible for the accuracy of the information submitted on his application and any failure to include information was at his peril. *See In the Matter of Harry Hunter* (MSB, decided December 1, 2004). *See also, In the Matter of Jeffrey Braasch* (MSB, decided December 1, 2004).

The appellant also argues that his failure to disclose this information was not material. However, even if there was no intent to deceive, in light of the appellant's driving record, which includes six motor vehicle violations over an approximate five-year period, including one as recently as May 2015, which was only a little more than one year prior to the August 31, 2016 subject examination closing date, his failure to disclose these motor vehicle violations was material. At minimum, the appointing authority needed this information to have a complete understanding of his background in order to properly evaluate his candidacy. *See In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017). Specifically, the appointing authority needed this information in order to determine if the appellant's driving record showed a pattern of disregard for the law and questionable judgment. In this regard, the Commission notes that it has upheld the removal of law enforcement candidates in innumerable cases based on an unsatisfactory driving history. *See In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div.

¹ A review of the appointing authority's background report includes a report dated April 25, 2017, which is prior to the January 18, 2018 certification date for the subject OL180039 certification. This report indicates that the appellant had indicated that he had four traffic violations instead of six. However, the updated February 26, 2018 background report that was prepared for the subject certification indicates that the appellant only disclosed three motor vehicle tickets when he admitted that he had six only a year earlier during his interview. Further, the Motor Vehicle History report included with the materials that the appointing authority submitted to the Division of Agency Services for the current certification only indicates that the appellant disclosed three motor vehicle violations.

June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998).

Some other issues need to be addressed. With respect to the appellant's claim that the appointing authority "falsified" its argument to the Commission, it is the appellant's candidacy that is being evaluated. Additionally, the appointing authority submits a Motor Vehicle History that the appellant submitted which only shows that the appellant disclosed three moving violations and not four. Regardless, even if the Commission accepts the appellant's position that he disclosed four motor vehicle violations, this would still mean he omitted two violations, which, given the circumstances, would be grounds for removal. Also, as stated above, even if the appellant was not being removed for falsification, based on his six motor vehicle violations, the appellant could be removed for an adverse driving history. Moreover, the fact that the appointing authority may not have previously removed him for falsification for a prior application did not relieve him of his duty to provide an accurate application for the subject opportunity. *See In the Matter of David Seybert* (MSB, decided May 18, 2005). Finally, concerning the appellant's comments that the Camden County Police Department did not have an issue with his truthfulness, the appointing authority is not bound by the standards of another appointing authority.

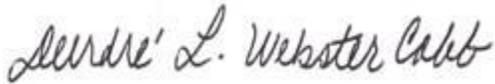
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Police Officer (S9999U), Cinnaminson eligible list.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16th DAY OF JANUARY, 2019



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